

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**April 16, 2012**

**Elisabeth A. Shumaker  
Clerk of Court**

BRIAN P. CALCARI,

Petitioner - Appellant,

v.

No. 12-1103

JOHN W. SUTHERS, Attorney General of  
the State of Colorado,

Respondent - Appellee.

**ORDER**

Before **LUCERO, MURPHY, and TYMKOVICH**, Circuit Judges.

Plaintiff Brian Calcari appeals for a second time from the district court's order denying his post-judgment motions. His prior appeal from the same district court order was dismissed for lack of jurisdiction. *Calcari v. Suthers*, No. 12-1081 (10th Cir. Mar. 14, 2012) (unpublished). We abated this appeal to allow the district court time to decide Mr. Calcari's motion seeking leave to "refile" the notice of appeal. The district court denied that motion. We entered an order to show cause as to why the second appeal should not be dismissed as untimely filed. Mr. Calcari filed a response. Upon consideration, we have concluded that we are without jurisdiction to consider this appeal.

“A timely notice of appeal is both mandatory and jurisdictional.” *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006) (quotation omitted). In a civil case, a notice of appeal must be filed within 30 days after the judgment or order appealed from is entered. Fed. R. App. P. 4(a)(1)(A). Although Mr. Calcari is proceeding *pro se*, he must comply with the same procedural requirements that govern other litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007); *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

In this case, the district court’s order denying Mr. Calcari’s post-judgment motions was entered January 13, 2012. To be timely, the notice of appeal must have been filed by February 13, 2011. *See* Fed. R. App. P. 4(a)(1)(A); 26(a)(1)(C) (computing time to file when deadline falls on weekend). The notice at issue in this appeal was not filed until March 23, 2012. Mr. Calcari unsuccessfully sought relief from the district court by filing a motion to “refile” the notice of appeal, which effectively sought to reopen the time to appeal. *See id.* 4(a)(6).

In response to this court’s order to show cause, Mr. Calcari argued that the district court should have granted relief based on the evidence he presented and that he should be allowed to appeal since he never received a copy of the January 13, 2012 order. These arguments might be persuasive under different circumstances, but Mr. Calcari has not appealed the district court’s order denying his motion to refile the notice of appeal. The only order pending in this appeal is the January 13, 2012 order. And because the district court denied his motion to reopen the time to appeal that order, we are without jurisdiction to consider his appeal of that order. The United States Supreme Court has

made clear that federal courts “ha[ve] no authority to create equitable exceptions to jurisdictional requirements.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007). As a result, this untimely appeal cannot be saved.

APPEAL DISMISSED.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith  
Counsel to the Clerk